

# ALLAHABAD HIGH COURT

Azimulla

Vs.

Suraj Kumar Singh

Second Appeal No. 519 of 1949, from decision of Civil Judge, Azamgarh,  
(Gurtu, J.)

30.11.1948. 02.01.1957

## JUDGMENT

### **Gurtu, J.**

1. This is a second appeal against the Municipal Board of Azamgarh.
2. The plaintiffs came to Court on the allegation that the imposition of enhanced octroi duty on heads of cattle by the Municipal Board was illegal and that the same had been wrongly collected from them. The plaintiffs prayed for an injunction restraining the Board from realizing the enhanced octroi duty and asked for a decree for refund of the amount wrongly collected from them.
3. The plaintiffs' case was that the enhancement of the octroi duty amounted to imposition of a tax by the Board, but that the enhancement had not been effected in accordance with the provisions of the U. P. Municipalities Act of 1916 (hereinafter to be referred to as 'the Act') and that, therefore, they were not liable to pay the octroi duty at the enhanced rate. Principally, the contention of the plaintiffs was that there had been no proper publication of the proposal to enhance the octroi duty in accordance with the provisions of Section 131 of the Act read with Section 94 thereof. It was also the plaintiffs' case that there was a failure on the part of the Board to pass a special resolution directing imposition of the tax under Section 134(2) of the Act and that, therefore, the notification relating to imposition of the tax made under the provisions of Section 135 of the Act in the official Gazette was illegal. For these reasons, it was the plaintiffs' case that there was no liability on the plaintiffs to be assessed for the payment of the enhanced octroi duty in respect of their cattle.
4. On behalf of the Board, a defense was entered and it was pleaded that the suit was not cognizable by the civil Court because it was barred under the provisions of Section 164 of the Act. It was also pleaded that there had been compliance with the provisions of the Act so far as they related to the enhancement of the octroi duty. It was further pleaded that the notification

issued under Section 135(3) of the Act imposing the tax was conclusive proof of the fact that the tax had been imposed in accordance with the provisions of the Act. Therefore, the case of the defendant Board was that there was no ground upon which the plaintiffs could obtain the injunction prayed for and the refund sought.

5. The learned Munsif, who tried the suit, came to the conclusion that it was within the power of the Board to enhance the octroi duty, that the prescribed formalities had been carried out and that the suit was not maintainable in the civil Court. He held that Section 164 of the Act was attracted and it barred the plaintiffs' suit. In this view of the matter, the learned Munsif dismissed the plaintiffs' suit.

6. There was an appeal by the plaintiffs. The learned Civil Judge was of the view that the failure to publish the proposal for enhancement of octroi duty in a local newspaper had been explained and that although the proposal was not published in a local newspaper, yet the same had been brought to the notice of the public by fixing notices at conspicuous places. The learned Civil Judge, therefore, was of the view that there was no failure to comply with the provisions of Section 131(3) read with Section 94 of the Act. The learned Judge further held that though there had been an omission to pass a special resolution under Section 134 after the approval by the Commissioner, that did not make the issue of notification imposing the tax under Section 135(2) illegal. In view of Clause (3) of the said section, the learned Judge was of opinion that the publication of the notification imposing the tax was conclusive proof that the tax had been imposed in accordance with the provisions of the Act. He was also of the view that since the imposition of the octroi duty was not a new tax, but only enhancement of an existing tax, the failure to publish the special resolution did not, in fact, matter. The learned Judge of the Court below also was of the view that the Board had the authority to alter the rate of octroi duty and that such alteration could not be challenged in the civil Court and that the only remedy, which was open to the appellants, was to file an objection against the enhancement of the tax or duty before the District Magistrate under Section 160 of the Act. It was further held that Section 164 was a bar to the jurisdiction of the civil Court. In this view of the matter, the learned civil Judge dismissed the appeal and affirmed the decree of the Court of the first instance.

7. The present second appeal has been filed by the plaintiffs. It is not contended that the Board has no power to enhance the octroi duty. It is, however, argued that the provisions of Section 131(3) read with Section 94 of the Act having not been complied with and also that the provisions of Section 134(2) of the Act not having been complied, no notification of imposition of a tax could be made under Section 135(2) and that despite the notification, the imposition of the enhanced octroi duty is illegal, the prescribed procedure not having been followed. It is also argued that Section 164 of the Act is no bar to the plaintiffs' suit because the suit does not relate merely to an objection taken to a valuation or assessment, but is a suit in which the very legality of the Imposition is questioned.

8. The last contention was resisted, in the first instance, by Mr. V. P. Misra, but, in the end, it was clearly conceded by him on behalf of the respondents that the civil Court had jurisdiction. This concession was justified upon the rulings cited before me, but it is not necessary for me to go into the question whether the Civil Court had or had not the jurisdiction because of the concession. Mr. Misra, however, resisted the contention of learned counsel for the plaintiff-appellants that the failure to comply with the provisions of Section 131(3) read with Section 94 of the Act and the failure to comply with the Provisions of Section 134 made the whole imposition illegal despite the notification of the imposition published in the Gazette under Section 135(3) of the Act. Mr. Misra further argued that inasmuch as this was merely a case of enhancement of a preexisting tax, strict compliance with the provisions of Sections 131 to 134 was not necessary in view of the provisions of Section 136 of the said Act. In order to understand the controversy between the parties, it is necessary to quote Sections 131 to 135 of the Act and also to quote Sections 94 and 136 of the Act :

Section 131. - "(1) When a board desires to impose a tax, it shall by special resolution frame proposals specifying –

- (a) the tax, being one of the taxes described in sub-section (1) of Section 128, which it desires to impose;
  - (b) the persons or class of persons to be made liable, and the description of property or other taxable thing or circumstances in respect of which they are to be made liable, except where and in so far as any such class or description is already sufficiently defined under Clause (a) or by this Act;
  - (c) the amount or rate leviable from each such person or class of persons;
  - (d) any other matter referred to in Section 153. which the State Government requires by rule to be specified.
- (2) The board shall also prepare a draft of the rules which it desires the State Government to make in respect of the matters referred to in Section 153.
- (3) The board shall, thereupon, publish in the manner prescribed in Section 94 the proposals framed under sub-section (1) and the draft rules framed under sub-section (2) along with a notice in the form set forth in Schedule III."

Section 132. - "(1) Any inhabitant of the municipality may, within a fortnight from the publication of the said notice, submit to the board an objection in writing to all or any of the Proposals framed under the preceding section, and the board shall take any objection so submitted into consideration and pass orders thereon by special resolution.

- (2) If the board decides to modify its proposals or any of them, it shall publish modified proposals and (if necessary) revised draft rules along with a notice indicating that the proposals and rules (if any) are in modification of proposals and rules previously published for objection.

Note. - It is to be noted that if a board modifies its proposals, the modified proposals must be again published for objection.

(3) Any objections which may be received to the modified proposals shall be dealt with in the manner prescribed in sub-section (1).

(4) When the board has finally settled its proposals, it shall submit them along with the objections (if any) made in connection therewith to the prescribed authority."

Section 133. - "(1) In the case of a municipality other than a city, if the proposed tax fails under clauses (i) to (xii) of sub-section (1) of Section 128, the prescribed authority after considering the objections received under sub-s (4) of Section 132, may either refuse to sanction the proposals or return them to the board , for further consideration or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as it deems fit.

(2) In any other case the prescribed authority shall submit the proposals and objections to the State Government, who may pass any of the orders desired in sub-section (1)."

Section 134. - "(1) When the proposals have been sanctioned by the prescribed authority or the State Government, the State Government, after taking into consideration the draft rules submitted by the board, shall proceed forthwith to make under Section 296 such rules in respect of the tax as for the time being it considers necessary.

(2) When the rules have been made the order of sanction and a copy of the rules shall be sent to the board, and thereupon the board shall by special resolution direct the imposition of the tax with effect from the date to be specified in the resolution."

Section 135 - "(1) A copy of the resolution passed under Section 134 shall be submitted to the State Government, if the tax has been sanctioned by the State Government, and to the prescribed authority in any other case.

(2) Upon receipt of the copy of the resolution the State Government, or prescribed authority, as the case may be, shall notify in the official Gazette, the imposition of the tax from the appointed date, and the imposition of a tax shall in all cases be subject to the condition that it has been so notified.

(3) A notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act."

Section 94. - "(1) .....

(2) .....

(3) Every resolution passed by a board at a meeting shall, where it is possible, be

published in a local paper published in English and in a local paper published in Vernacular, or, where both such papers do not exist, in a local paper published in one or other of such languages, and, in default of any local paper, in such manner as the State Government may by rule prescribe.

(4) Copies of every resolution passed by a board meeting shall, within ten days from the date of the meeting, be forwarded to the Prescribed authority and the District Magistrate.

(5) When, subsequent to action being taken in respect of any resolution under sub-section (3) or (4), but before the minutes recording the resolution are signed as required by sub-section (2), any alteration is made in the wording of such minutes the alteration shall be notified by publication or communicated to the prescribed authority and the District Magistrate, as the case may be.

(6) ....."

Section 136. - "The procedure for abolishing a tax, or for altering a tax in respect of the matters specified in clauses (b) and (c) of sub-section (1) of Section 131, shall, so far as may be, be the procedure prescribed by Sections 131 to 135 for the imposition of a tax."

9. A perusal of these sections shows that three special resolutions have to be passed altogether in the process of the imposition of a new tax.

10. The preliminary proposals have to be made by a special resolution under Section 131(1). This special resolution, framing preliminary proposals, has to be published under Section 131(3) in the manner prescribed in Section 94. Section 94(3) requires that where it is possible every resolution of the Board should be published in a local paper published in English and in a local paper published in the Vernacular, but where both such papers do not exist, in any local paper published in one or the other of such languages and, in default of any local paper in such manner as the State Government by rule prescribe.

11. Section 131, it is admitted before me, was complied with except as to sub-section (3) because despite the fact that there was a local Paper in the Vernacular, publication was not admittedly made in it as required by Section 94 of the Act.

12. Section 132 relates to the procedure subsequent to the framing of proposals. It provides for, objections to the proposals framed, empowers the Board to modify its own proposals in the light of the objections and then to finally settle its proposals. The settled proposals are finalized by means of a special resolution disposing of the objections. The finally settled proposals are then submitted along with the objections, if any, made in connection therewith to the prescribed authority (in this case, the Commissioner). It was admitted before me that Section 132 had been complied with. Then under Section 133, power is given to the State Government or prescribed authority to reject sanction or modify the proposals so finally settled by a special resolution and submitted to it under the provisions of the preceding Section 132 of the Act.

13. It is only after this stage is over and the proposals have been sanctioned by the prescribed authority that under Section 134(2) of the Act, the Board is empowered to pass a resolution directing the imposition of a tax. The resolution has to be a special resolution. It is admitted before me that no such special resolution was passed. It is a copy of this special resolution that is required to be submitted to the State Government or to the prescribed authority under Section 135(1) of the Act. Upon receipt of a copy of the said special resolution, under the provisions of Section 135(2) of the Act, there is a notification in the Official Gazette imposing the tax from an appointed date and that sub-section makes the imposition of a tax in all cases subject to the condition that it has been so notified.

Then follows sub-section (3) of the section which states that the notification of the imposition of the tax is conclusive proof that the tax has been imposed in accordance with the provisions of the Act. As has been pointed out by me, it was admitted that there had not been a strict compliance with the provisions of Section 131(3) read with Section 94(3) of the Act (i.e. there was a failure to publish a special resolution by which the preliminary proposals were framed and also a failure to pass a special resolution under Section 134 of the Act imposing a tax). Even if the failure in the first matter of publication of the special resolution proposing the tax might be waived in view of the finding that the preliminary proposals were otherwise made known, the failure to comply with 6. 134 cannot be overlooked. It is only when a special resolution is passed under the provisions of Section 134(2) that it can be said that the framed preliminary proposals have passed from the stage of proposals to the stage of an imposed tax. The power of the prescribed authority or the State Government to notify the imposition of a tax is dependent upon a copy of the special resolution passed under Section 134(2) of the Act having been submitted. It is only then the State Government or the prescribed authority can notify the imposition of the tax, in the Official Gazette and it is after such notification that the presumption that a tax has been imposed in accordance with the Act becomes conclusive. If no special resolution is passed by the Board, there is no authority in the State Government or the prescribed authority to proceed to publish any other resolution and the publication of any other resolution than the special resolution under Section 134 would not have the effect of imposing a tax or making the publication in the Official Gazette conclusive. It has been well-recognized under analogous Acts that despite such a provision, as is contained in Section 135(3) of this Act, if the imposition is ultra vires or if there is a failure to comply with the pre-requisite stages necessary to the imposition of a tax then the mere publication, in the Gazette, of the alleged resolution will not shut out an enquiry as to whether the provisions of the Act have been complied with. The general principles governing this matter are indicated in several cases which I now propose to refer to :

14. In *Trustee for the Improvement of Calcutta v. Chandra Kanta Ghosh*<sup>1</sup>, with reference to land acquisition under the Calcutta Improvement Act (Bengal Act V of 1911), their Lordships of the Privy Council stated as follows :

"Whenever the Local Government does sanction an improvement scheme, there is a duty

to announce the fact by notification, and the publication of a notification is conclusive evidence that the scheme has been duly framed and sanctioned. This provision does not affect the right of the respondent to institute a suit to have it declared that the Board in framing the scheme acted ultra vires or, that the scheme as sanctioned does not authorize the appellants to acquire by compulsion the land in question."

15. In *Radha Swami Satsang Sabha v. Tara Chand*<sup>2</sup>, in a case under the Land Acquisition Act, 1894, it was stated that a declaration under Section 6(3) of the Act is ordinarily conclusive of the fact that land is needed for public purposes or for a company, but it cannot be conclusive of the liability to

<sup>1</sup>18 All LJ 521 at p. 524 : (AIR 1920 PC 51 at p. 52)

<sup>2</sup> AIR 1939 All 557

acquisition if it be found that any illegality was committed at the proceeding or if there was any material violation of any of the provisions of the Act in any of the stages prior to the declaration.

16. In *Ram Charan Lal v. State of Uttar Pradesh*<sup>3</sup>, which is again a case under the Land Acquisition Act which makes the declaration under Section 6, sub-(1) of the Act conclusive evidence that the land is needed for a public purpose or a company, as the case may be, the Court held that notwithstanding the terms of the sub-section, it was open to the Courts to examine whether the provisions of the Act had been complied with and it is only when the provisions have been complied with that there is conclusiveness in regard to the declaration.

17. The principle which flows from these cases is clear. Applied to the facts of this case, if a special resolution imposing the tax had been passed in accordance with the stages prescribed and a copy of the special resolution had been sent to the Government or to the prescribed authority and if the special resolution had then been notified, then the notification would have been conclusive proof that the tax had been imposed in accordance with the provisions of the Act. But where the very foundation of the authority given under Section 135 of the Act is lacking, namely the existence of a special resolution under Section 134 of the Act, then the notification of any alleged special resolution was quite outside the competence of the State Government or the prescribed authority and in such a case, despite the notification, there would be no conclusiveness in regard to the procedure under the Act having been followed.

18. A case was also cited in support of a contrary view. It is reported as *Emperor v. Har Datt*<sup>4</sup>. In that case, the argument was that the tax in question was not a tax leviable on a vehicle but was leviable on passengers as the burden of the tax would ultimately fall on the passengers and that, therefore, the tax in question was ultra vires as it was against the provisions of Section 128 of the Municipalities Act. It was held that that tax was not against the provisions of Section 128 of the Municipalities Act. Then followed the following observations :

"The question whether the tax is in accordance with the provisions of the Municipalities Act or not is concluded by the fact that the imposition of the tax has been notified in the

Gazette by the Government. After the notification it is not open to anybody to question the validity of the tax."

If this ruling suggests that if despite the fact that a Board has exercised a power not vested in it or has not passed a special resolution imposing a tax and yet the Government notifies the tax, even then the notification will afford conclusive proof that the tax had been imposed in accordance with the provisions of the Act, then, with respect, I do not agree.

19. The next contention, which requires examination, is whether the provisions of Section 136 of the Act, which lays down that the procedure for abolishing a tax, or for

<sup>3</sup>1952 All LJ 319 : AIR 1952 All 752

<sup>4</sup>1936 All LJ 962 : AIR 1936 All 743

altering a tax shall, so far as may be, be the procedure prescribed by Sections 131 to 135 for the imposition of a tax, allow the Board in the case of alteration of a tax to disregard the provisions of Section 134 which requires it to pass a special resolution imposing the tax. The words "so far as may be" in Section 136 of the Act do not suggest that it is open to the Board to disregard the procedure, unless a disregarding of that procedure is essential for the purpose of effecting an alteration of a tax. The most important part of the procedure relating to the imposition of a tax must necessarily be the special resolution imposing the tax. In a matter of taxation, the legislative or other authority, to which the power of imposition of a tax is delegated, must necessarily do some thing of an unequivocal character which will show that it has imposed a tax. No looseness can be permitted in the imposition of a liability, or of a tax.

20. I am, therefore, of the view that even if the enhancement of the prevailing octroi duty be taken as a case of altering a tax, a special resolution under Section 134 of the Act was essential. The result of this discussion, therefore, is that it being conceded that the civil Court had jurisdiction and it being clear that the enhancement of the octroi duty was effected without the passing of a special resolution imposing the enhanced octroi duty, there was no right in the Municipal Board to collect the octroi duty at the enhanced rate and the plaintiffs would be entitled to a refund of the excess amount collected. The excess amount paid by the plaintiffs has not been determined by either of the two Courts below and it is, therefore, necessary to remit an issue to this end.

21. I accordingly, direct that the following issue be remitted to the Court below for recording its finding thereon : "What is the excess amount of octroi duty paid by the plaintiffs to the defendants?" Parties will be permitted to produce oral and documentary evidence bearing on this issue. The Court below will return its finding on the above issue to this Court within a period of four months from the date of the receipt of record by it. On receipt of the finding, ten days will be allowed to the parties for filing objections, if any. Thereafter the case will be listed before me for final orders.

(Note : - After the return of the finding by the lower Court on the issue remitted, his

Lordship passed the following order :)

22. The Court below has returned its finding from which it appears that between the periods 28-8-45 and 21-3-46 Rs. 383-14-0 by way of excess octroi duty was paid by the plaintiff-appellant and that during the pendency of the suit and the appeal in the Court below a sum of Rs. 9,626-8-0 was paid by way of excess octroi duty.

23. Objections have been taken to this finding that it is arbitrary and based on mere conjectures and surmises and no proper accounts and is perverse.

24. It appears that a Commissioner was appointed and he submitted a report on the basis of the Municipality's own account books. The learned Court, on remand, has stated that none of the parties had objected to the report of the Commissioner. In view of this the Court was justified in acting upon the Commissioner's report.

25. The excess duty has been paid by virtue of Board's resolution No. 8 dated 26-3-45 and the resolution No. 6 dated 10-11-1945. I have already held that there was no right in the Municipal Board to collect the octroi duty at the enhanced rate under the aforesaid resolutions. In view of my finding and the finding of the Court below on remand and in view of the expression of opinion by me in Second Appeal No. 1476 of 1952, dated the 25th of September 1956 that a decree in excess of the pecuniary jurisdiction of a Court may be passed in a suit of this nature, I allow this appeal and give the plaintiffs a declaration that the imposition of enhanced duty on heads of cattle by the Municipal Board of Azamgarh under the resolutions Nos. 6 and 8 dated 10-11-1945 and 26-3-1945 respectively was illegal. I also issue an injunction against the Municipal Board of Azamgarh restraining them from realising the enhanced octroi duty under the said resolutions. I also grant the plaintiffs a decree for a total amount of Rs. 10,010-6-0 with costs in all Courts.

26. Learned counsel for the respondent prays for leave to file a Special Appeal which I grant.

Appeal allowed.